

OPEN MEETING ITEM

COMMISSIONERS
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BOB STUMP
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ARIZONA CORPORATION COMMISSION

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DATE: DECEMBER 18, 2015

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Arizona Corporation Commission

DOCKETED

DOCKET NO.: RR-02635B-15-0198

DEC 18 2015

TO ALL PARTIES:

DOCKETED BY	
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Enclosed please find the recommendation of Administrative Law Judge Marc Stern.
The recommendation has been filed in the form of an Opinion and Order on:

BNSF RAILWAY
(UPGRADE CROSSING)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by 4:00 p.m. on or before:

DECEMBER 28, 2015

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

JANUARY 12, 2016

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602) 542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.

JODI JERICH
EXECUTIVE DIRECTOR

1200 WEST WASHINGTON STREET; PHOENIX, ARIZONA 85007-2927 / 400 WEST CONGRESS STREET; TUCSON, ARIZONA 85701-1347

This document is available in alternative formats by contacting Shaylin Bernal, ADA Coordinator, voice phone number 602-542-3931, E-mail SABernal@azcc.gov.

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 **COMMISSIONERS**

3 SUSAN BITTER SMITH - Chairman
4 BOB STUMP
5 BOB BURNS
6 DOUG LITTLE
7 TOM FORESE

8 IN THE MATTER OF THE APPLICATION OF THE
9 ARIZONA DEPARTMENT OF
10 TRANSPORTATION TO UPGRADE AN EXISTING
11 AT-GRADE CROSSING OF THE BNSF RAILWAY
12 AT THE GRAND AVENUE/THUNDERBIRD
13 ROAD INTERSECTION IN THE CITY OF EL
14 MIRAGE, MARICOPA COUNTY, ARIZONA,
15 USDOT NO. 025 631X.

DOCKET NO. RR-02635B-15-0198

DECISION NO. _____

OPINION AND ORDER

11 DATE OF PROCEDURAL CONFERENCE: August 11, 2015

12 DATE OF HEARING: November 5, 2015

13 PLACE OF HEARING: Phoenix, Arizona

14 ADMINISTRATIVE LAW JUDGE: Marc E. Stern

15 APPEARANCES: Ms. Michelle Burton, Assistant Attorney General,
16 Transportation Section, on behalf of the Arizona
17 Department of Transportation;

18 Mr. Patrick Black, Fennemore Craig, on behalf of
19 Burlington Northern & Santa Fe Railway
20 Company; and

Ms. Bridget Humphrey, Staff Attorney, on behalf
of the Safety Division of the Arizona Corporation
Commission.

21 **BY THE COMMISSION:**

22 On June 17, 2015, the Arizona Department of Transportation ("ADOT") filed with the Arizona
23 Corporation Commission ("Commission") a request for approval for the BNSF Railway ("Railway")
24 to upgrade an existing at-grade crossing at the Grand Avenue/Thunderbird Road intersection in the
25 City of El Mirage ("El Mirage"), Maricopa County, Arizona at USDOT No. 025 631X
26 ("Application").¹

27 _____
28 ¹ At this intersection, Thunderbird Road approaches Grand Avenue from the southwest and after crossing Grand Avenue
and the Railway's right of way, it meets Thompson Ranch Road which lies to the northeast of the Railway's tracks.

1 On July 9, 2015, the Railway Safety Section of the Safety Division ("Staff") of the Commission
2 filed a Request for a Procedural Conference to address certain issues concerning the Application.

3 On July 17, 2015, by Procedural Order, a procedural conference was scheduled on August 11,
4 2015.

5 On August 11, 2015, a procedural conference was held with the parties present to discuss the
6 issues raised by Staff.

7 On August 12, 2015, by Procedural Order, a hearing on the Application was scheduled to
8 commence on November 4, 2015.

9 On August 14, 2015, the Railway filed a Motion to Reset Hearing because its witness was
10 unavailable due to a prior engagement on November 4, 2015. Counsel for the Railway further indicated
11 that neither ADOT nor Staff opposed the Railway's request.

12 On August 18, 2015, by Procedural Order, the hearing was continued to November 5, 2015, as
13 requested by the Railway. All other filing dates and publication of public notice were ordered to remain
14 the same.

15 On November 5, 2015, a full public hearing was convened before a duly authorized
16 Administrative Law Judge of the Commission at its offices in Phoenix, Arizona. ADOT, the Railway
17 and Staff were present with counsel. At the conclusion of the hearing, the matter was taken under
18 advisement pending submission of a Recommended Opinion and Order to the Commission.

19 * * * * *

20 Having considered the entire record herein and being fully advised in the premises, the
21 Commission finds, concludes, and orders that:

22 **FINDINGS OF FACT**

23 1. On June 17, 2015, ADOT filed an Application requesting an Opinion and Order from
24 the Commission approving an agreement between ADOT and the Railway to upgrade an existing at-
25 grade crossing at the Grand Avenue/Thunderbird Road intersection in El Mirage, Maricopa County,
26 Arizona at US DOT No. 025 631X.

27 2. Prior to the filing of the Application, representatives of ADOT, El Mirage, the Railway
28 and Staff participated in a diagnostic review meeting with respect to the proposed improvements at

1 Grand Avenue and Thunderbird Road. All parties who were present at these meetings were in
2 agreement that the proposed enhancements would improve safety at the crossing.

3 3. ADOT is seeking Commission approval to upgrade the existing at-grade crossing which
4 consists of two eastbound thru lanes, one westbound left turning lane and a westbound thru lane. As
5 part of the improvements, Grand Avenue would be widened to the south. The improvements at
6 Thunderbird Road would consist of two eastbound thru lanes, two dedicated westbound left turn lanes,
7 one westbound thru lane and a shared westbound thru/right turn lane. Moreover, a new concrete
8 crossing surface will be added and any impacted pavement markings replaced. Plans also call for a
9 new raised median to be installed with two new flashing lights and gates, one for westbound traffic and
10 one for eastbound traffic. In addition, the existing cantilever and gate flasher unit will remain in place
11 for westbound traffic and a new cantilever and flashing light and gate unit will be installed on the curb
12 for eastbound traffic. Furthermore, advanced traffic preemption that will interconnect with the traffic
13 signals will also be installed.

14 4. On September 24, 2015, ADOT filed documentation that it had provided public notice of
15 the Application and hearing thereon, pursuant to the Commission's Procedural Order, by publishing
16 notice in the *Daily News Sun* and *The Arizona Republic*.

17 5. On October 8, 2015, Staff filed the Staff Memorandum that recommends approval of the
18 Application by ADOT.

19 6. According to the Staff Memorandum, the proposed improvements at the crossing are
20 consistent with safety measures which are employed at similar at-grade crossings in Arizona.

21 7. The Staff Memorandum describes a variety of zoning areas that overlap and are adjacent
22 to the proposed upgrade area.

23 8. The hearing was held as scheduled on November 5, 2015.

24 9. Mr. Sayeed Hani, ADOT's Railroad Liaison, testified that the proposed upgrade
25 involves basically a "road widening project" which involves Grand Avenue/US 60 and Thompson
26 Ranch Road. (Tr. 6:20-21)(Ex. ADOT-1)

27 10. Mr. Hani testified that ADOT will delay the upgrade project until May 2016, to begin
28 the projects so that school will not be in session and the students who ride 42 school busses which

1 normally utilize the crossing daily will not be inconvenienced by a planned 28 day road closure for the
2 portion of the roadway which involves Thompson Ranch Road during the construction of the upgrade.
3 (Tr. 7) (Ex. ADOT-2)

4 11. According to Mr. Hani, the upgrade is fully funded and is part of a five year ADOT
5 project.

6 12. Mr. Hani stated that, based on a 2011 traffic study by ADOT, 16,090 vehicles per day
7 utilize the Thompson Ranch Road portion of the crossing. (Tr. 8:1-10)

8 13. Mr. Hani explained that the closure of the crossing that affects the Railway's tracks will
9 be a temporary one month closure that is necessary in order for the construction to take place at what
10 he termed is an "active railroad crossing" where 13 trains a day cross the roadway. (Tr. 8:16-24)

11 14. Mr. Hani further testified that ADOT has reviewed the Federal Highway
12 Administration's ("FHWA") Railroad-Highway Grade Crossing Handbook and, based on ADOT's
13 review of the FHWA's nine standards set forth in the handbook for determining whether a grade
14 separated crossing is warranted, ADOT determined that a grade separated crossing is not appropriate
15 for this project. (Tr. 9:1-16)

16 15. Mr. Hani further stated that there are several nearby public at-grade crossings less than
17 one mile from where the project is located and these can be utilized during the temporary closure of
18 the at-grade crossing of the Railway's tracks at Thompson Ranch Road. (Tr. 9:18-24)

19 16. According to Mr. Hani, the total project cost for the upgrade of the at-grade crossing at
20 Thompson Ranch Road is approximately one million dollars. (Tr. 10:5-7)

21 17. Mr. Hani testified that he is in agreement with Staff's recommendation to approve
22 ADOT's Application for the entire project which will take approximately 18 months to complete. (Tr.
23 12-13)

24 18. Mr. Hani further stated that he believes that the improvements which will be made to
25 the at-grade crossing in this project are consistent with those of similar at-grade crossings in Arizona.
26 (Tr. 13:7-11)

27 19. Mr. Hani testified that there will be no restrictions or closures for automobile traffic
28 traveling US 60 to and from Phoenix in the vicinity of the at-grade crossing of the Railway's tracks

1 where Thompson Ranch Road will be temporarily closed. (Tr. 16:9-17)

2 20. Mr. Hani further testified that the general area near the crossing consists of a number of
3 empty lots, but there are a mixture of homes and commercial properties in the area. (Tr. 17:1-8)

4 21. Testifying further, Mr. Hani stated that ADOT has not received any objections or
5 protests from any residents or businesses in the area of the proposed upgrade. (Tr. 17:19-21)

6 22. ADOT has received a letter from El Mirage's Director of Development and Community
7 Services/City Engineer which indicates that El Mirage is in "full support of the US60-Grand Avenue /
8 Thunderbird Road/Thompson Ranch Road intersection project." In this letter, the official from El
9 Mirage announces that the city supports the proposed 28 day closure of the crossing where Thompson
10 Ranch Road crosses the Railway's tracks. (Tr. 18:6-18)(Ex. ADOT-2)

11 23. Further testifying, Mr. Hani stated that flagmen from the Railway will be present when
12 trains are passing through the crossing while work is being performed near the tracks. (Tr. 19:2-20)

13 24. According to Mr. Hani, the automatic warning devices at the crossing will be
14 repositioned with the widening of the roadway. (Tr. 20:6-9)

15 25. Mr. Hani stated that the project will not be completed with federal funds as with the
16 ordinary Section 130 upgrades, but will be funded with money from the Maricopa Association of
17 Governments ("MAG") as part of the Regional Transportation Plan. (Tr. 20:13-22)

18 26. According to Mr. Hani, with the widening of the roadway, ADOT believes that the level
19 of service at the crossing will improve after the improvements are made. (Tr. 22:15-25)

20 27. Mr. Matthew Keim, the Manager of Public Projects for the Railway, testified that the
21 Railway supports the Application by ADOT in this matter. (Tr. 25-26:11-2)

22 28. Mr. Keim further testified that the Railway agrees with the conclusions and
23 recommendations made in the Staff Memorandum. (Tr. 27:3-5)

24 29. Mr. Keim stated that the Railway is willing to file a copy of its construction agreement
25 with ADOT in the docket. (Tr. 28:16-20)

26 30. Mr. Keim further testified that when work is being performed within 25 feet of the tracks
27 at the Thompson Ranch Road crossing, a Railway flagman will be present. When no work is occurring
28 at the crossing, it will be closed and barricaded to prevent any unauthorized access. (Tr. 29-30:15-16)

1 31. Further testifying, Mr. Keim stated that because the project will be fully funded by
2 ADOT, no contribution will be made by the Railway to the upgrade project in this instance. (Tr. 30-
3 31:24-6)

4 32. Mr. Chris Watson, the Assistant Supervisor of the Railroad Safety Section, testified that
5 he was responsible for the preparation of the Staff Memorandum which recommends approval of the
6 Application in this proceeding. (Tr. 33-34)

7 33. Mr. Watson further stated that the improvements being made at the Grand
8 Avenue/Thunderbird Road intersection in El Mirage will make the crossing consistent with other
9 similar at-grade crossings in Arizona. (Tr. 35:1-5)

10 34. Mr. Watson stated that Staff is in agreement with ADOT and supports the 28-day
11 closure of the at-grade crossing for the improvements proposed in the Application. (Tr. 19-25)

12 35. According to Mr. Watson 18 months is a reasonable period of time for the improvements
13 which will be made at this crossing. (Tr. 13-17) .

14 36. Mr. Watson further stated that Staff has not received any protests against the temporary
15 closure of the crossing. (Tr. 37:9-12)

16 37. Staff is recommending that the Application be approved.

17 **CONCLUSIONS OF LAW**

18 1. The Commission has jurisdiction over the parties and over the subject matter of the
19 Application pursuant to Article XV of the Arizona Constitution and A.R.S. §§ 40-336, 40-337, and 40-
20 337.01.

21 2. Notice of the Application was provided in accordance with the law.

22 3. The construction of the crossing upgrade is necessary for the public's convenience and
23 safety.

24 4. Pursuant to A.R.S. §§ 40-336 and 40-337, the Application should be approved as
25 recommended by Staff.

26 5. After the installation of the improvements at the Grand Avenue/Thunderbird Road
27 crossing, the Railway should maintain the crossing in accordance with A.A.C. R14-5-104.

28 ...

ORDER

IT IS THEREFORE ORDERED that the Arizona Department of Transportation's Application, as described herein, is hereby approved.

IT IS FURTHER ORDERED that the BNSF Railway shall complete the crossing upgrade as described in the Application within 18 months of the effective date of this Decision.

IT IS FURTHER ORDERED that the BNSF Railway shall notify the Commission, in writing, within 10 days of both the commencement and completion of the crossing upgrade, pursuant to A.A.C. R14-5-104.

IT IS FURTHER ORDERED that upon completion of the crossing upgrade, BNSF Railway shall maintain the crossing in compliance with A.A.C. R14-5-104.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, JODI JERICH, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this _____ day of _____ 2016.

JODI JERICH
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

MES:ru(tv)

SERVICE LIST FOR:

BNSF RAILWAY

DOCKET NO.:

RR-02635B-15-0198

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